

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD SMITH, JR.,

Plaintiff,

No. 22-11586

v.

Honorable Nancy G. Edmunds

BISCHAN HASSUNIZADEH, *et al.*,

Defendants.

**ORDER ACCEPTING AND ADOPTING THE MAGISTRATE JUDGE'S
DECEMBER 12, 2024 REPORT AND RECOMMENDATION [77]**

This is a pro se prisoner civil rights lawsuit filed under 42 U.S.C. § 1983 by Plaintiff Edward Lee Smith, Jr. (ECF No. 1.) The case has been referred to Magistrate Judge Anthony P. Patti for all pre-trial matters. (ECF No. 42.) Before the Court is the Magistrate Judge's report and recommendation to dismiss this matter pursuant to Federal Rule of Civil Procedure 41(b) and deem the two pending dispositive motions moot.¹ (ECF No. 77.) Plaintiff has filed an "objection" to the report. (ECF No. 78.) Plaintiff states that he has a representative acting on his behalf but is having a hard time communicating with her while incarcerated. He apologizes to the Court and asks for "one more chance." But this explanation only impacts the first of the four factors that guide a dismissal under Rule 41(b) for failure to prosecute. *See Knoll v Am. Tel. & Tel. Co.*, 176 F.3d 359, 363 (6th Cir. 1999) (listing those factors as "(1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to

¹ There are only six defendants remaining in this case. The other named defendants were previously dismissed by the Court. (See ECF Nos. 8, 11, 58, 62, 66.)

dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered”) (citation omitted). Moreover, there is no explanation as to how Plaintiff will be able to comply with the Court’s deadlines in the future, especially given the fact that he remains incarcerated. Thus, the Court finds that despite Plaintiff’s filing, this case should be dismissed under Rule 41(b) as recommended by the Magistrate Judge. Accordingly, the Court OVERRULES Plaintiff’s objection and ACCEPTS AND ADOPTS the report and recommendation (ECF No. 77). Plaintiff’s remaining claims are DISMISSED without prejudice, and the pending motions (ECF Nos. 72, 73) are DENIED as moot.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: January 10, 2025

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 10, 2025, by electronic and/or ordinary mail.

s/ Marlena Williams
Case Manager